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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,264	07/24/2001	Jonathan Zittrain	111267.120	4128
23483	7590	04/22/2005	EXAMINER	
WILMER CUTLER PICKERING HALE AND DORR LLP			MULLEN, THOMAS J	
60 STATE STREET			ART UNIT	
BOSTON, MA 02109			PAPER NUMBER	

2632

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/912,264

Applicant(s)

ZITTRAIN ET AL.

Examiner

Thomas J. Mullen, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-17 is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The amendment filed 12/23/04 has been fully considered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 18-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure does not appear to support what is presently recited in claim 18, lines 2-3, i.e. that a squeezed contraction to a bracelet causes that bracelet to contract around and squeeze the wearer of that bracelet (note that there is only a single "bracelet" recited in claim 18). Rather, the original disclosure appears to teach that a squeezed contraction to a bracelet causes other bracelets to contract around and squeeze the wearers of those bracelets.

5. Claims 25-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25, lines 4-5, "the change in physical state of the first device" lacks clear antecedent basis; i.e., line 2 of the claim recites in part that the first device senses "a change in a physical state" without specifying that such physical state is a "state" of the first device itself.

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6. Claims 18-19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cataldo (US 4121160) in view of either LaWhite et al (US 4491970) or Levinson et al (US 4611198).

(Note, claim 18 is being treated as unamended, in view of the "new matter" issue raised in paragraph 4 above.)

Note in Cataldo, communications system comprising a "wearable" first device (case 5, necklace 8); sensor (12,12',13,13') for sensing a "squeezed contraction" to the first device (see the Abstract and col. 2, lines 27-45); and transmitter (1,6) for transmitting a signal indicative of the "contraction", to e.g. police or emergency medical personnel (col. 1, lines 5-10). Thus, Cataldo teaches all the subject matter of claim 18 except for the wearable first device being a "bracelet". However, at the time of the invention it was well known in the art of wireless emergency communications that portable devices carried by individuals (to initiate a wireless emergency communication as needed) may be sufficiently miniaturized so as to take on a wide variety of physical forms, e.g. necklaces, bracelets, belt-mounted pagers, etc, so as to not be overly cumbersome to the user; for example LaWhite et al and Levinson et al are from the same art as Cataldo, and teach that a portable user-carried transmitting device may be, e.g., either a necklace-type or a bracelet-type (see e.g. lines 2-3 of the Abstract in LaWhite et al, and col. 1, line 32 in Levinson et al). Therefore, in view of either LaWhite et al or Levinson et al, one skilled in the art would have recognized that the necklace-type communications device of Cataldo can be readily implemented as a bracelet-type device, and it would have been obvious to do so depending on the needs and/or tastes of a particular user.

Regarding claim 19, Cataldo implicitly teaches providing the police or emergency medical personnel with a "second device" for receiving the signal and providing an "indication" of the contraction ("alarm or telephone dialing service"--col. 1, line 10).

Regarding claim 23, it appears to be inherent in Cataldo that the transmitter (1,6) transmits to the receiver (mentioned above with respect to claim 19) "directly".

7. Claims 1-17 are allowed. Claims 25-35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph. Claims 20-22 and 24 would be allowable if rewritten in independent form including all of the limitations of the base claim and any

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intervening claims, and if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first paragraph.

8. Applicant's arguments with respect to claims 18-19 and 23 have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

TJM


Thomas J. Mullen, Jr.
Primary Examiner
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